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TELECOMMUNICATIONS REPORT: CONTINUATION OF TALKS WITH THE EUROPEAN COMMUNITY AND KOREA

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS FINDINGS THAT SUBSTANTIAL PROGRESS HAS BEEN MADE IN TELECOMMUNICATIONS TRADE TALKS CONDUCTED UNDER SECTION 1375 OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, PURSUANT TO PUBLIC LAW 100-418, SECTION 1376(c)(2)(B) (102 STAT. 1221)

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THE WHITE HOUSE,
Washington, March 8, 1991.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to section 1376(c)(2)(B) of the Omnibus Trade and Competitiveness Act of 1988 ("the Act") (Public Law 100–418; 102 Stat. 1221), I am hereby transmitting my report that finds that substantial progress has been made in telecommunications trade talks conducted under section 1375 of the Act with the European Community (EC) and Korea and contains the reasons why an extension of the negotiating period with the EC and Korea is necessary.

Sincerely,

GEORGE BUSH.

TELECOMMUNICATIONS REPORT:

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Introduction

Section 1376(c)(2)(B) of the Omnibus Trade and Competitiveness Act of 1988 ("the Act") (Public Law 100-418; 102 Stat. 1221) requires that, should the President extend the negotiating period for telecommunications trade talks with any previously-identified priority foreign country, he must submit a report on the status of negotiations with that country to appropriate committees of the Congress within 15 days of his decision. That report must contain a finding that substantial progress is being made in negotiations and the reasons why an extension of the negotiating period is necessary. On February 22, 1991, I extended the negotiating period for telecommunications trade talks, originally initiated with the European Community (EC) and Korea on February 18, 1989, for a final one-year period. This report -- submitted in fulfillment of section 1376(c)(2)(B) -- describes the substantial progress that has been made to date and the reasons why it is necessary to continue telecommunications talks.

I. The Initiation of Telecommunications Talks

Section 1374(a) of the Act required the United States Trade Representative (USTR) to "conduct an investigation to identify priority foreign countries" for purposes of the telecommunications provisions of the Act. The USTR concluded the investigation on January 19, 1989, and identified the EC and Korea as priority foreign countries. In reporting to the appropriate committees of the Congress under section 1374(d) regarding our identification of the EC and Korea, USTR stated,

> Based on analyses of important telecommunications markets in Europe relative to criteria specified in section 1374, government investigators found that access by the U.S. telecommunications industry to countries that are members of the European Community varies widely, from relatively open access to almost completely closed. In certain European Community member states, we have found market access restrictions relating to, inter alia, government purchasing practices, standards and standards-setting procedures, provision of value-added services, and, in certain cases, investment.
>
> With respect to Korea, market access problems arise as a result of definitional issues and other restrictions in the value added services area, government procurement practices, investment practices, standards and certification-related procedures, and import tariffs on equipment.

Accordingly and as required under section 1375 of the Act, I initiated negotiations with these countries and established specific negotiating objectives with each country which addressed, inter alia, the issues outlined above. Consistent with Section 1379 of the Act, the USTR consulted with private sector advisory committees established under the Trade Act of 1974, with regard to the identification of priority countries and the development of our specific negotiating objectives. In addition, the interagency telecommunications trade group received extensive advice from other interested parties, including the Chamber of Commerce Task Force on Telecommunications Trade, the Telecommunications Industry Association, and individual U.S. companies and labor groups.

At the conclusion of the first year of negotiations, substantial progress had been made, and I determined that it was appropriate to extend the negotiations for a one-year period.

II. Options for Action under the Trade Act

Under sections 1374 and 1376 of the Act, the Administration had three options regarding the EC and Korea following the expiration of the first one-year extension of negotiations.

1. If the negotiations failed to reach an agreement that achieved the negotiating objectives established, the President is directed to take appropriate action, as authorized under 1376(b);

2. The USTR could revoke the identification of any priority foreign country made "if information available to the Trade Representative indicates that such action is appropriate." In this case, Section 1374(c) requires that a "detailed explanation" of the reasons for the revocation be reported to the Congress; or

3. The negotiating period could be extended for not more than one final one-year period, pursuant to section 1376(c). The 1991-1992 negotiating period would be the second, and final, extension for the EC and Korea.

During the one-year extension of talks under section 1376 (February 1990-February 1991), the EC and Korea built on the work of the initial negotiating period to make further substantial progress toward market liberalization. I therefore determined that it was appropriate to extend the negotiations for an additional, and final, one-year period.

III. Progress in the EC: 1989 and 1990

In the first year of talks under section 1375 of the Act (February 1989-February 1990), as part of its overall telecommunications market liberalization/ harmonization program, the EC opened its $6 billion market for terminal equipment to competition. In addition, the EC used the European Telecommunications Standards Institute (ETSI), created in 1988, to work toward harmonizing standards for European equipment and services. Finally, the EC made progress toward the adoption of numerous directives designed to (1) increase competition EC-wide in numerous telecommunications market segments, including value-added services and network equipment and (2) provide for intra-EC mutual recognition of type approval for terminal equipment.

In the first one-year extension of talks under section 1376 (February 1990-February 1991), the EC continued to make progress toward telecommunications market integration and liberalization. The EC completed the process for adoption of a number of directives, including those providing for competition in the provision of most value-added services, greater access for EC firms to government procurement markets, and rules governing access to and use of telecommunications networks. In addition, it took other steps that could improve foreign suppliers' access to the European market. More specifically,

o The Commission adopted the Directive Coordinating the Laws, Regulations and Administrative Provisions Relating to the Application of Community Rules on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors. This directive provides for the establishment of competitive procurement procedures in areas previously not subject to such procedures, i.e., water, energy, transport, and telecommunications. The directive mandates nondiscriminatory and transparent tendering procedures for all suppliers whose offers are at least 50 percent EC origin. It also establishes a 3 percent price preference for offers of Community origin. Adoption of this "excluded sectors" directive was a prerequisite for the EC to negotiate coverage of telecommunications entities under the GATT Government Procurement Code.

o The Commission adopted the Directives on (1) Competition in the Markets for Telecommunications Services ("Services Directive") and (2) the Establishment of the Internal Market for Telecommunications Services through the Implementation of Open Network Provision ("ONP Directive"). The essential thrust of the Commission's action plan for telecommunications services is pro-competitive. In linking these two directives, the Commission signalled its strong view that services liberalization cannot be achieved absent some basic ground rules for access to the

"reserved" networks and services of the telecommunications administrations (TAs).

-- The Services Directive is intended to open the European market to competition in the provision of non-reserved services. Under the directive, the exclusive rights of the TAs will be limited to the network infrastructure and the provision of voice telephone service. All other services are to be open eventually to EC-wide competition, except the following, to which the directive does not apply: mobile telephony, paging, and such mass communications as radio and television.

-- The ONP Directive establishes the framework for harmonizing the conditions for access to and use of public telecommunications networks and services among all member states. In addition to imposing obligations on the TAs to supply access to the network and to network services, supply conditions may be imposed on certain private providers of competitive services. The ONP framework also includes conditions of use for all users of the network and network services, including competitive service providers. ONP is intended to encourage the provision of pan-European services through the harmonization of technical interfaces for access to member state networks. As such, ONP should yield the benefits of greater transparency and common access and use conditions on an EC-wide basis.

o In addition, in September 1990, the Commission reported that all but 6 of the original 36 exclusive supply arrangements of member state telecommunications administrations for specific types of terminal equipment had been eliminated.

o The Commission issued Competition Guidelines, which are intended to provide guidance to public telecommunications operators, other telecommunications providers, and users about the legal and economic principles that will be followed by the Commission in the application of competition rules to undertakings in the telecommunications sector.

o In 1990, the United States and the EC agreed to a round-robin testing exercise designed to build confidence in U.S. and EC test laboratories' ability to test terminal equipment for compliance with each others' packet-switching standards.

o The EC has also begun work to draft ONP directives for discrete services, such as leased lines, integrated services data networks (ISDN), packet and circuit switched data services, and voice telephony. Finally, the EC has issued a policy paper setting out the Commission's proposals to harmonize EC-wide satellite communications policy.

o The United States and the EC met during 1990 to discuss the Telecommunications Services Annex to the draft Services Framework Agreement under the General Agreement on Tariffs and Trade (GATT) and specific U.S. requests for EC liberalization. The EC has played a constructive role in supporting the premise that market access commitments can not be undermined by restrictions on access to and use of basic telecommunications services.

IV. Progress in Korea/Building on Measures Undertaken in 1990

The United States and Korea met bilaterally on two occasions in the last year on telecommunications matters and met extensively on a multilateral basis in the context of Uruguay Round negotiations on telecommunications services.

Over the past year, Korea has implemented commitments undertaken in the February 1990 Record of Understanding: accelerated tariff reductions; adoption of a nondiscriminatory and transparent standards-making process for telecommunications equipment; preliminary steps toward implementing its commitment to liberalize government procurement by 1992; and certain liberalization of some domestic data base and data processing services.

In addition, in February 1991, the United States and Korea agreed upon an additional Record of Understanding, focused primarily on the liberalization of the Korean market for domestic and international enhanced services. Significant progress on U.S. objectives was achieved in this Understanding.

o Korea has committed to liberalizing international value added network services (IVANS) and other domestic telecommunications services in the context of its Uruguay Round offer on services market access. This commitment is to become effective July 1, 1991. At present, Korea proposes the full elimination of investment requirements by 1994, an issue which still remains under debate with the United States. The 1991 Record outlines and verifies in detail the scope of that liberalization and the terms of market access provided under that offer. It outlines in detail the Korean intentions regarding structural reform of their telecommunications sector and the intention to employ the concept of a "negative list" for identifying those services that will not be subject to liberalization.

o To build on these commitments, the United States and Korea have exchanged letters confirming the intention to begin negotiation of an agreement on IVANS no later than May 1, 1991, with a view to concluding this agreement by the July 1 date on which IVANS will be liberalized in Korea.

o The 1991 Record of Understanding also outlines the liberalized registration and notification systems required for the provision of existing and new services and limits those functions, provides assurances that value-added service providers will have access to the public network for provision of their services without restraint, and ensures that value-added service providers will be allowed to tailor their services to meet the specific needs of their customers. These provisions also ensure that value-added service providers will not be required to reveal proprietary information. Other terms and conditions of market access outlined in the Record include commitments to seek changes in laws relating to approval of interconnection contracts to ensure that only simple notification is required; the elimination of all local processing requirements (except for the purposes of "protecting national security or public morals"); commitments regarding the attachment of terminal equipment without separate approval or notification; and some liberalization in the area of intra-corporate communications, defined as "self-use and shared-use" provisions.

o Substantial progress was also made on the issue of competition safeguards. Korea recognizes the need to develop such safeguards to prevent unfair competition between network service providers (basic service providers) and value-added service providers who lease the facilities of network providers. The Korean Government has agreed to begin a process to develop permanent competition safeguards to meet the needs of their new liberalized environment. The 1991 Record contains a commitment to use existing powers to monitor and implement sanctions for anti-competitive behavior by network service providers pending completion of a study on the effectiveness of various structural and non-structural competition safeguards. It also commits the Korean Government to introduce and endeavor to obtain passage of new legislation designed to secure and promote fair competition in the telecommunications services market. The process for developing a legislative proposal will be open to public input by both foreign and domestic interests.

V. Reasons Why an Extension is Necessary

A decision to terminate our discussions with Korea and the EC could jeopardize not only current progress but also prospects for future liberalizing actions of specific interest to the United States. Both the EC and Korea have made substantial progress to date in liberalizing their telecommunications market. Notwithstanding this progress, however, issues remain to be resolved.

Although the EC has adopted or implemented a number of internal measures that should benefit U.S. suppliers, there are a number of U.S. objectives that remain to be addressed. These relate to,

inter alia, government procurement; continuous, active remedy measures to ensure fair competition with the TAs; mutual recognition of testing and type approval on an MFN basis; minimal mandatory equipment and services standards and a fully transparent standards-setting process; more open treatment of digital network channel terminating equipment; intellectual property rights issues; availability and pricing of leased lines; use of proprietary protocols; and licensing requirements for value-added services, including data services.

With respect to Korea, significant progress has been made over the last year in bilateral negotiations between the United States and the Republic of Korea and in the Uruguay Round negotiations on telecommunications services. Nevertheless, several key U.S. objectives remain to be achieved. The U.S. remains concerned about the timing of liberalization of foreign investment in the Korean international value-added services market. The coverage of several value-added services, shared-use of communications for intracorporate purposes, and discrimination between voice and data communications service providers and between international and domestic users of leased line services for intracorporate services are further issues to be addressed. Outstanding issues also need to be addressed on approval of operating agreements and attachment of exchange equipment to the network. In the area of procurement, we will focus on completion of Korea's accession to the GATT Government Procurement Code and obtaining assurance that all appropriate telecommunications goods and services ultimately are included in Korea's Code coverage.

In addition, much work remains to be done in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) and in the GATT Codes on Government Procurement and Technical Barriers to Trade (Standards) to ensure greater market access for U.S. telecommunications equipment and services providers. Therefore, extension of the negotiating period for a final one-year period is the most appropriate option to select.